

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PORT OF OLYMPIA,

Plaintiff,

v.

M/V THE DREAM f/k/a EVERGREEN
STATE and JONES GLOBAL
INVESTMENT LLC,

Defendants.

IN ADMIRALTY

Case No. 3:20-cv-05789-JCC

DECLARATION OF LEN FAUCHER

Leonard C. Faucher, Jr. (Len Faucher) declares as follows under the penalty of perjury of the laws of the United States of America:

1. I am the Marine Terminal Director for the Port of Olympia. I am over the age of eighteen (18) and am otherwise competent to testify to the facts stated herein. I make this declaration based upon personal knowledge.

2. In my role as Marine Terminal Director, I negotiated and oversaw the account for dockage and wharfage services provided by the Port of Olympia to the M/V THE DREAM (the "Vessel"), which has been berthed at the Port since April 2018.

3. From April 2018 to April 30, 2020, pursuant to the terms of the layberth agreement with the Port, Jones Global agreed to pay \$3,500 per month, plus lease excise tax, to berth the Vessel at the Port's marine terminal. Copies of the layberth agreement and its

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1 extensions are attached hereto as Exhibit A. Per the terms of the agreement, interest on
2 unpaid moorage accrues at 18% per annum. All other services and charges were per the
3 Port's published Tariff rates.

4 4. As set forth in the Verified Complaint and attachments thereto, which I
5 previously verified, the layberth agreement between Jones Global and the Port was extended
6 multiple times, ultimately expiring on April 30, 2020. After April 30, 2020, and per the
7 terms of the agreement, the Port's published Tariff rate applied instead of the negotiated
8 \$3,500 month berth rate.

9 5. Jones Global failed to pay for November 2019 moorage and charges, and all
10 charges thereafter incurred. The Port attempted to work with Jones Global to arrange a buyer
11 for the Vessel that would repay the Port's charges, provide insurance for the Vessel, and
12 arrange for it to leave the dock, but all efforts to privately sell the Vessel were to no avail.

13 6. As of September 15, 2020, the date that the Vessel was arrested by the U.S.
14 Marshal, the Port was due and owing for the following wharfage services provided to the
15 Vessel at Jones Global's request, totaling \$88,914.12:

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Dockage and Operations					
47880	12/2/2019	Invoice	\$ 4,311.88	Nov-19	Nov 2019 Dockage
3902	12/31/2019	Finance Charge	\$ 48.69	Dec-19	
48075	1/3/2020	Invoice	\$ 3,949.40	Dec-19	Dec 2019 Dockage
3919	1/31/2020	Finance Charge	\$ 63.79	Jan-20	
48333	2/3/2020	Invoice	\$ 3,949.40	Jan-20	January Dockage
48334	2/4/2020	Invoice	\$ 3,060.40	Feb-20	Dock and rub rail repairs
3938	2/29/2020	Finance Charge	\$ 114.26	Feb-20	
48556	3/3/2020	Invoice	\$ 3,949.40	Feb-20	February Dockage
3962	3/31/2020	Finance Charge	\$ 218.13	Mar-20	
48861	4/3/2020	Invoice	\$ 3,949.40	Apr-20	March Dockage
3991	4/30/2020	Finance Charge	\$ 280.46	Apr-20	
49090	5/4/2020	Invoice	\$ 3,949.40	May-20	April Dockage
4022	5/31/2020	Finance Charge	\$ 348.38	May-20	
49312	6/1/2020	Invoice	\$ 11,648.25	May-20	May Dockage at tariff
4042	6/30/2020	Finance Charge	\$ 395.38	Jun-20	
49542	7/1/2020	Invoice	\$ 2,119.98	Jun-20	June 26-30 Dockage at tariff
49541	7/1/2020	Invoice	\$ 10,599.91	Jun-20	June 1-25 Dockage at tariff
4064	7/31/2020	Finance Charge	\$ 473.04	Jul-20	
49750	8/3/2020	Invoice	\$ 13,799.77	Aug-20	July Dockage at tariff
4083	8/31/2020	Finance Charge	\$ 557.72	Aug-20	
49993	9/1/2020	Invoice	\$ 13,799.77	Aug-20	August dockage at tariff
	9/30/2020	Finance Charge	\$ 650.00	Sep-20	Finance charge is appx
	9/30/2020	Invoice	\$ 6,677.31	Sep-20	Sept 1-15 Dockage at tariff
Dockage, Operations & Finance Fee			\$ 88,914.12		

7. Copies of the invoices for the charges through April 30, 2020 are attached hereto as Exhibit B. In addition to the agreed dockage, they include a \$331.64 charge in December 2019 for labor involved to provide blocking surrounding the Vessel and a \$3,060.40 charge in February 4, 2020 for damage caused by the Vessel to the Port's dock. These were all part of the wharfage services provided to the Vessel.

8. Following the expiration of the layberth agreement in April 30, 2020, the Port applied its published Tariff rate for dockage. A copy of the Port's published Tariff No. 11 is available on the Port's website (as required by the Federal Maritime Commission) at portolympia.com/DocumentCenter/View/3578/Olympia-Terminal-Tariff-11-July-1-2020.

9. The Port updated its Tariff effective July 1, 2020. From May 1 to June 30, 2020, the published tariff rate for a vessel measuring between 250 and 350 feet in length was

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1 \$1,503 per 24 hour period. Per the terms of the Tariff, dockage for vessels in layberth are
2 charged at 25% of that rate. So, for May 1 to June 30, 2020, the Vessel incurred dockage at a
3 Tariff rate of \$375.75 per 24 hour period (plus applicable taxes). From July 1 to September
4 15 (and to the current time), the published dockage rate for the Vessel is \$1,578, which
5 applying the 25% layberth deduction, equates to a daily charge of \$394.50 (plus applicable
6 taxes).

7 10. The fact that the Vessel is uninsured presents pressing liability concerns for
8 the Port. In addition to those liability concerns, the Vessel is currently occupying a large
9 berth which would otherwise be used by the Port for income generating activities.

10 11. On top of the amounts owed to the Port for unpaid wharfage prior to the
11 arrest, and on top of amounts that the Vessel is preventing the Port from making by
12 occupying a large berth, the Port is incurring significant custodial fees associated with the
13 arrest, which increase daily the longer this action draws out. As of the date of the signing of
14 this Declaration, the Port has incurred more than \$15,000 in custodial costs since the
15 Vessel's arrest, including Marshal fees, costs of the Substitute Custodian, and ongoing
16 dockage at the Port. The Port will continue to accrue these custodial costs up through the
17 date that the Vessel is released or sold. It is my personal belief, based on conversations I
18 have had with prior interested buyers, that the likely sales proceeds from a sale of the Vessel
19 will not be nearly sufficient to pay custodial costs and the Port's lien. Thus, it is imperative
20 that the Port move quickly with the sale to prevent further losses associated with the Vessel.

21 Dated this 1st day of October, 2020 at Olympia, Washington.

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25 Leonard C. Faucher, Jr.
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